

SERVICE DATE – AUGUST 1, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42097

ALBEMARLE CORPORATION

v.

THE LOUISIANA AND NORTH WEST RAILROAD COMPANY

Decided: July 31, 2006

In a decision served on May 2, 2006, the Board held this rate reasonableness proceeding in abeyance until the completion of the rulemaking in Major Issues in Rail Rate Cases, STB Ex Parte No. 657 (Sub-No. 1), et al. (STB served Feb. 27, 2006) (Major Issues). Both parties have made requests which, for reasons of administrative efficiency, the Board will address at this time. This proceeding, however, will remain held in abeyance, except as discussed below.

Motion to Dismiss

On May 8, 2006, The Louisiana and North West Railroad Company (LNW) filed a motion to dismiss the complaint, contending that Albemarle Corporation (Albemarle) is improperly seeking review of a bottleneck rate. In its reply, Albemarle argues that, because it has entered into contracts with Union Pacific Railroad Company (UP) and The Kansas City Southern Railway Company (KCS) related to both inbound and outbound shipments from and to the junctions with LNW, it is properly challenging LNW's proportional local rate.

Both parties cite Central Power & Light Co. v. Southern Pac. Transp. Co., 1 S.T.B. 1059 (1996) (Bottleneck I), clarified, 2 S.T.B. 235 (1997) (Bottleneck II), aff'd sub nom. MidAmerican Energy Co. v. STB, 169 F.3d 1099 (8th Cir. 1999) in support of their respective positions. In Bottleneck I and Bottleneck II, the Board found that if a shipper has an existing rail transportation contract with a carrier for the non-bottleneck portion of a line-haul, it may separately challenge the bottleneck portion independent of the rate for the remainder of the through movement. The Board reasoned that, because the Board does not have jurisdiction over contract carriage, see 49 U.S.C. 10709(c)(1), it only has jurisdiction over that portion of the total rate not covered by the contract. Bottleneck I, 1 S.T.B. at 1074-75; Bottleneck II, 2 S.T.B. at 242-45.

Thus, the dispute between the parties raises a threshold jurisdictional question. If the principle of the decisions in Bottleneck I and Bottleneck II applies to this case, as both parties argue it does, the complaining party must show contract carriage for the non-local portion of the through movement before it may challenge the local portion of the rate. Therefore, to challenge

LNW's local rate, Albemarle must first demonstrate that it has a rail transportation contract in place with another railroad for the non-local portion of the movement.

As a practical matter, this jurisdictional dispute may be resolved through a simple demonstration by Albemarle that the transportation contracts it claims to have with UP and KCS exist and apply to the past and future movements at issue here. Albemarle is therefore directed to file with the Board, within 20 days of the service date of this decision, copies of these contracts, with any confidential rate information redacted.

#### Request to Consolidate

In its complaint, Albemarle requested that the Board consolidate this proceeding with the pending proceeding in STB Docket No. 42096. LNW opposes consolidation.

In a decision served on May 30, 2006, in which the Board ordered Albemarle to file a reply to LNW's motion to dismiss, the Board stated that it would not consider Albemarle's request to consolidate, if necessary, until it resolves LNW's motion to dismiss. However, upon further review, it is clear that the two proceedings involve distinct and substantially different underlying facts and legal standards, and therefore, Albemarle's request to consolidate will be denied. By denying the request to consolidate now, the Board avoids any prejudice to LNW from an unnecessary delay in STB Docket No. 42096 until the completion of Major Issues.

#### Motion to Partially Lift Order

On June 2, 2006, Albemarle also filed a motion asking the Board to partially lift its order holding this proceeding in abeyance so that it may conduct discovery before completion of the rulemaking in Major Issues. LNW opposes the motion.

In the Board's decision holding this proceeding in abeyance, it specifically found that Albemarle's complaint implicates at least one issue that is being addressed in Major Issues. Moreover, in Major Issues, the Board suspended discovery in all stand-alone cost (SAC) proceedings because of concerns that discovery would be rendered obsolete or unwarranted by changes in the applicable SAC methodologies. In its motion, Albemarle fails to distinguish this proceeding from the other SAC proceedings being held in abeyance or to provide any other justification sufficient to support an exception to the Board's reasoning for suspending discovery in Major Issues. Therefore, Albemarle's motion will be denied.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding will remain held in abeyance until the completion of the rulemaking in Major Issues, except that Albemarle is directed to file with the Board, within 20 days of the service date of this decision, the transportation contracts it has entered with UP and KCS related to both inbound and outbound shipments, from and to the junctions with LNW, with any confidential rate information redacted.

2. The request to consolidate this proceeding with the proceeding in STB Docket No. 42096 is denied.

3. The motion to partially lift the order holding this proceeding in abeyance is denied.

4. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary